



April 27, 2016

Ms. Katherine Jack  
740 W. Green Meadows Drive, Ste. 300  
Greenfield, Indiana 46140

Dear Ms. Jack:

This is in response to your appeal letter dated March 16, 2016, in which you objected to the U.S. General Services Administration's (GSA) response to your FOIA request (GSA-2015-001135), submitted on dated August 31, 2015. GSA originally responded to your FOIA request on November 30, 2015.

Specifically, you objected to two (2) separate documents not being provided per two (2) GSA letters dated September 12, 2011, and April 23, 2013, respectively. Additionally, you objected to GSA redacting the names of private individuals in the agency's original response to your FOIA request. These objections are being treated as FOIA Appeal No. GSA-2016-000638.

**1. Appeal of GSA's failure to produce documents:**

In your appeal, you assert that GSA failed to produce:

- 1: A MSRP pricelist and Xcel spreadsheet prices from a letter dated September 12, 2011 for the products as related to the contract that was the subject of your FOIA request; and
- 2: A letter dated August 23, 2012 from GSA requesting information on "addition of Authorized Negotiator and removal of one that is no longer employed with the company."

**Agency's Response:**

Your original FOIA request (No. GSA-2015-001135) was for: "any and all contracts held by or awarded to Pepperball Technologies, Inc., including any and all change of name packages and/or novation packages submitted by Pepperball Technologies to include any and all change of name/novation packages submitted by the successor of Pepperball Technologies, Inc.'s. This request is also seeking any contracts originally awarded to Pepperball Technologies, Inc. but now held by the successor of Pepperball Technologies, Inc."

GSA has previously provided responsive documents to your original FOIA request. The two (2) above-mentioned documents that are part of your appeal were not a part of your original FOIA request. Thus, you need to submit a separate FOIA request for these documents.

**2. Appeal of Redaction of names of Individuals working for private companies:**

You assert that "There is no privacy interest in the name of these individuals. Even if there is some privacy interest, the public has an interest in learning the identities of individuals making representations upon which GSA is relying to make significant purchases. These are individuals attempting to exert influence on government action."

**Agency's Response:**

Federal officials handling personal information are "bound by the Privacy Act not to disclose any personal information and to take certain precautions to keep personal information confidential," as stated in Big Ridge, Inc. v. Fed. Mine Safety & Health Review Comm'n, 715 F.3d 631, 650 (7th Cir. 2013). Beyond this consideration, once it has been determined that a personal privacy interest is threatened by a requested disclosure, this stage of the analysis requires an assessment of the public interest in disclosure. The burden of establishing that disclosure would serve the public interest is on the requester, as noted by the court in Carter v. United States Dep't of Commerce, 830 F.2d 388, 391 nn.8 & 13 (D.C. Cir. 1987). The Supreme Court repeatedly has stressed that "information that does not directly reveal the operations or activities of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve", as noted in Bibles v. Or. Natural Desert Ass'n, 519 U.S. 355, 355-56 (1997). Since GSA has previously provided you with a copy of the contract which identifies the scope of the activities of the agency as it relates to this contract award, it is our position that providing the names of private individuals does not advance an understanding of government activities.

**3. Appeal of Redaction of names of Individuals working for private companies:**

You also assert that GSA 'over-redacted' certain records because some of the information is publicly available.

**Agency's Response:**

In Edmonds v. FBI, 272 F. Supp. 2d 35, 53 (D.D.C. 2003), the United States Court of Appeals for the District of Columbia Circuit held that the mere fact that some information may be known to some members of the public does not negate the individual's privacy interest in preventing further dissemination to the public at large. Furthermore, the United States Court of Appeal for the Fifth Circuit stated in Sherman v. United States Dep't of the Army, 244 F.3d 357, 363-64 (5th Cir. 2001), "it is important to remember that while the government may voluntarily or involuntarily waive its right to an exemption when its own interests are at stake, it cannot waive an individual's privacy interests under the FOIA by unilaterally publicizing information about that person."

Also, the Attorney General's Memorandum for Heads of All Federal Departments and Agencies Regarding the Freedom of Information Act (Oct. 2001) provides that, "the privacy interest inherent in Exemption 6 "belongs to the individual, not the agency holding the information- and the fact that otherwise private information at one time or in some way may have been placed in the public domain does not mean that a person irretrievably loses his or her privacy interest in the information." Hence, case precedent demonstrates the fact that some of the information regarding private individuals may be publicly available is not evidence of 'over-redacting'. Information that would constitute a clearly unwarranted invasion of personal privacy nonetheless remains exempt from release.

#### **4. Conclusion**

After a careful review of your appeal, GSA upholds its initial decision to exempt from release the names of the private individuals pursuant to the FOIA's sixth statutory exemption, 5 U.S.C. 552(b)(6).

This letter constitutes the GSA's final determination of this matter. You have the right to seek judicial review of this determination in the United States District Court in the District in which you reside, have your principal place of business, or in the District of Columbia, or where the records are located.

As an alternative to litigation, the Office of Government Information Services (OGIS) has been created under the 2007 FOIA amendments. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a Non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS by mail at the following address: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, Room 2510, College Park, MD 20740, via e-mail at [ogis@nara.gov](mailto:ogis@nara.gov) or by phone at 877- 684-6448.

Sincerely,

  
Cynthia A. Metzler  
Chief FOIA Officer